**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

NOTICE OF MOTION NO. 2071 OF 2003
WITH
NOTICE OF MOTION NO. 1879 OF 2003
WITH
CHAMBER SUMMONS NO. 984 OF 2003
WITH
CHAMBER SUMMONS NO. 9 OF 2004
WITH
CHAMBER SUMMONS NO. 83 OF 2004
IN
EXECUTION APPLICATION NO. 98 OF 2004
IN
SUMMARY SUIT NO. 7 OF 2001

Bharat Petroleum Corporation Limited ... Plaintiff

Versus

Radha Dying & Printing Mills and Ors. ... Defendants

and

Radha Ballabh Chiranjilal & Ors. Respondents

and

Radha Silk Mills Pvt. Ltd. ..Applicants

Mr. Sanjay Kothari i/by M.P. Savla & Co. for Plaintiff.

Mr. D.V. Merchant with Ms. Deepa Mani i/by S.K. Srivastav & Co. for R. No. 1.

None for Applicant in Chamber Summons No. 83 of 2004.

**CORAM : A.M. KHANWILKAR,J.**
**DATED : JUNE 08, 2005**

**P.C.**

. By Notice of Motion No. 2071 of 2003 the respondents pray that the order passed on 19.3.2003

in Chamber summons No.11 of 2003 be set aside. The respondents were partners in the defendant No. 1 firm which is a registered partnership firm. The decree has been obtained by the Plaintiff against the defendants including the firm of which respondents were partners. As the respondents were not named as defendants in the suit, Plaintiffs took out Chambers Summons No. 11 of 2003, praying for leave under Order 21 Rule 15 of C.P.C. to execute the decree dated 21.8.2001 against the defendants and respondent Nos. 1 to 4 (respondents/applicants herein) passed in Summary Suit No. 7 of 2001 in the sum of Rs.77,877.24 with further interest against defendants named in the suit. The said chamber summons was duly served upon the defendants as well as respondents. Inspite of service, none appeared either for the defendants or the respondents herein. As the averments made in the affidavit in support of Chamber Summons No. 11 of 2003 remained uncontroverted and as none appeared for the contesting parties, this court had no option but to accede to the prayers made by the Plaintiff in the said chamber summons as recorded above. That order came to be passed on 19.3.2003. The present notice of motion however, has been filed on 9.7.2003. According to respondents, although they were duly

served with the copy of the chamber summons and the pleadings, they did not take any steps till May, 2003. It is stated that the respondent No. 1 kept chamber summons which was served on him in the drawer of the cupboard and noticed the same only in May, 2003, whereafter, instructed his advocate to prepare reply to contest chamber summons No. 11 of 2003. However, the said chamber summons was already made absolute by order dated 19.3.2003 as mentioned earlier. In my opinion, the reason stated by the respondents for setting aside the exparte order does not merit indulgence. Besides, no explanation is offered as to what prevented the Respondent Nos. 2 to 4 to attend to the matter though they were duly served. In that sense, no sufficient cause has been made out. The averments in the affidavit in support of Notice of Motion are vague and not sufficient to convince the court so as to excuse the respondents for not filing reply affidavit within time and to appear before the court at the hearing of the chamber summons.

. Be that as it may, I permitted the counsel to address the court on merits. The fact that the respondents were partners of the defendant No. 1 firm is not in dispute. However, according to respondents, they have retired from the firm much

before filing of the suit by the Plaintiffs. However, it is not disputed that the notice was published by the respondents about their retirement only on 12.6.2003. In view of the mandate of Section 32(3) of the Partnership Act, respondents would continue to be liable for the acts of the partnership Firm and responsible for the decree passed against the firm. That is the legal obligation of the respondents on account of section 32(3) of the Partnership Act. Viewed in this perspective, the argument that the disputed premises came to the share of respondents by virtue of Order passed in Arbitration proceedings in appeal before this court on 16.7.1996 or that respondents had already retired and had no connection with partnership firm will be of no avail to the respondents. To my mind, notice of motion taken out by the respondents is devoid of merits and the same deserves to be dismissed with costs. Hence, dismissed with costs.

. In view of the reasons recorded in respect of the plea taken by respondents, for the same reasons the Chambers summons taken out by the respondents being Chamber Nos. 9 of 2004 ought to fail and deserves to be dismissed. By that chamber summons respondents are seeking that the attachment in

respect of the disrupted flat be raised. Accordingly, even chamber summons No. 9 of 2004 stands dismissed with costs.

. Chamber summons No. 83 of 2004 has been filed by the Radha Silk Mills Pvt. Ltd. However, none appears for the applicant. The same is dismissed for non prosecution.

. Chamber Summons Nos. 984 of 2003 and Notice of Motion No. 1879 of 2003 are taken out by the Plaintiff for appointment of Court Receiver in respect of the disputed premises. As the said property is already attached under the orders of this court, it is not necessary to appoint court receiver in respect of the same property. Hence, the above numbered chamber summons and the Notice of Motion are allowed to be withdrawn as prayed for by the counsel for the Plaintiff. ’

**(A.M. KHANWILKAR,J.)**